

2.24 Right of Way

2.24.1 General

2.24.1.1 Available Right of Way

The Design-Builder shall acquire the property, property rights, or both for this Project as determined during Phase 1 Services and agreed upon at the time of entering into each Culvert Bundle Amendment. The Design-Builder shall have access to the Right of Way (ROW) for conducting Phase 1 Services upon issuance of the NTP for Phase 1 Services, and for Phase 2 Work upon issuance of an applicable NTP for Phase 2 Work or as agreed at the time of entering into each Culvert Bundle Amendment.

Prior to entering or using any areas located outside of the existing ROW, the Design-Builder shall verify and confirm the location and accuracy of the ROW boundaries.

WSDOT has prepared mapping, monumentation, and survey control for the Project as described in TR Section 2.5, *Survey and Mapping*.

2.24.1.2 Right of Way Use Permit

The Design-Builder shall acquire any necessary right-of-way use permits.

The Design-Builder shall acquire any local agency haul road/detour agreements, or any additional permits and approvals as may be required by the Local Agencies to perform the Work. The Design-Builder shall pay all associated fees required to obtain permits including inspection fees that apply.

2.24.1.3 Laydown and Staging Areas

WSDOT did not identify any staging areas within the Project limits. If the Design-Builder identifies staging and laydown areas within the ROW, the Design-Builder shall submit a staging site request package to the WSDOT Engineer for Review and Comment. The submittal shall include site layout and grading, drainage analysis, description of use, Traffic Control Plans, Temporary Erosion, and Sediment Control Plans, and Site Prep and Restoration Plans. The Design-Builder shall be responsible for obtaining the necessary permits and WSDOT approval for the use of these sites. The Design-Builder shall be responsible for developing a plan and securing appropriate approvals for laydown and staging site access.

If the site is approved by the WSDOT Engineer, waste material shall be placed at the identified location.

2.24.2 *Mandatory Standards*

The following is a list of Mandatory Standards that shall be followed for all ROW activities related to design and construction related to this Section as referenced in TR Section 2.2, *Mandatory Standards*.

1. *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*, as amended
2. 49 Code of Federal Regulations (CFR) Part 24
3. 23 Code of Federal Regulations (CFR) Part 710
4. RCW 8.26 *Relocation Assistance – Real Property Acquisition Policy*
5. WAC 468-100 *Uniform Relocation Assistance and Real Property Acquisition*
6. WSDOT *Right of Way Manual* M 26-01 (Appendix 4)
7. WSDOT *Plans Preparation Manual* M 22-31 (Appendix 4)

2.24.3 *Additional Right of Way Acquisition*

2.24.3.1 *Additional Right of Way*

If the Design-Builder's design requires the acquisition of property, property rights (temporary or permanent), or both, outside of the ROW agreed to at the time of entering into a Culvert Bundle Amendment, the Design-Builder shall identify the type and location of the ROW and submit a request for additional ROW to the WSDOT Engineer for Review and Comment, in accordance with this Section, and Section 2.14 (Task 12 – Right of Way Plans and Real Estate Acquisition) of Appendix 2 to the PDB Contract and subsection 4.4(E) (Additional Right of Way Acquisition) of the PDB Contract.

In the event that the Design-Builder determines additional ROW will be required and WSDOT agrees, the Design-Builder shall perform real property acquisition services in accordance with this Section.

2.24.3.2 *Use of Right of Way Consultants*

The Design-Builder shall utilize consultants from WSDOT's approved real estate consultant list to perform all ROW acquisition activities for the Project and shall maintain close coordination with WSDOT.

WSDOT's Approved Consultant List is available at the following website:

<https://fmdata.wsdot.wa.gov/ROWservices/approvedrowlist.php>

The time required to acquire ROW varies. In the event that additional ROW acquisition will be delayed for an unreasonable period of time through action or inaction of affected property owners and is out of the Design-Builder's control, the Design-Builder may submit a written notice to WSDOT requesting an

extension of time in accordance with Section 6.9 (Other Changes to the Phase 2 Work and Design and Construction Requirements) of the PDB Contract. The Design-Builder may be granted an extension of time but no additional compensation for the delay.

Additional ROW necessary to construct the Project shall be acquired by the Design-Builder in accordance with WSDOT's approved ROW procedures.

The Design-Builder shall submit a request for additional ROW to WSDOT for review and approval. The Design-Builder shall allow 14 Calendar Days for WSDOT to review the request.

The Design-Builder's request for additional ROW shall include the following:

- A letter indicating the Design-Builder's name, the Project name, the Project location, the PDB Contract number, the submittal date, and the submittal type.
- A plan of sufficient scale and detail to show the existing and proposed roadway ROW, the proposed easements, and the total area of the proposed acquisition, in accordance with the WSDOT *Plans Preparation Manual*.
- An outline of what will be required for the Design-Builder to acquire the ROW will include, at a minimum, additional land (fee) ownership, airspace, Utility corridors, access rights, and permanent or temporary easements.
- A discussion of the impacts on the Project schedule and a proposed plan to recover the Project schedule.
- If applicable, a demolition plan of all buildings, structures, and other improvements located in the ROW. The plan shall also include the inspection, sampling, and testing of any lead-based paint, asbestos, or other Hazardous Materials, in accordance with Applicable Law.
- Prepare for and attend three (3) oversight feedback reviews (OFR).

2.24.3.3 Right of Way Acquisition

In order to minimize the impacts of acquisition on the property owners, and to acquire the necessary property expeditiously, all additional ROW, whether permanent or temporary, from a property owner who owns multiple properties in the ROW, shall be acquired in a single offer, unless otherwise determined by WSDOT at its sole discretion.

The Design-Builder shall comply with all the regulations and requirements of the Bureau of Indian Affairs and/or the Native American Tribe or individual Native American for the acquisition of tribal lands.

GENERAL PROJECT MANAGEMENT

The Design-Builder shall provide general project management and administration direction and guidance for the Design-Builder staff working on this Project. The

Design-Builder shall also perform the project management and administration tasks as follows:

- Perform general Project management activities, including coordination with WSDOT, and updating the project schedule, as appropriate.
- Attend pre-Project Right-of-Way (ROW) meeting with the WSDOT Olympic Region Real Estate Services (RES) Office.
- Prepare for and attend a minimum of three (3) oversight feedback reviews (OFR).

PROPERTY APPRAISAL

The Design-Builder shall provide appraisal services and appraisal reports, prepared by an appropriately qualified appraiser on WSDOT's Approved Appraiser List, for all parcels to be acquired. The WSDOT Approved Appraiser List is available at the following website:

<https://fmdata.wsdot.wa.gov/ROWservices/approvedrowlist.php>

The appraisal scope of work will be submitted to WSDOT for review and input prior to beginning the appraisal process. The Design-Builder shall allow 7 Calendar Days for WSDOT to review and provide input or approve the appraisal scope of work.

WSDOT will be identified as an intended user in the appraisal report.

The property appraisal services shall include, but not be limited to the following:

- Track and update appraisal ROW schedule milestones.
- Prepare for and attend the pre-project ROW meeting.
- Provide pertinent project data available to complete the appraisal assignments to the appraiser and to WSDOT.
- Provide landowner notice of appraisal inspection for WSDOT approval and send it to the landowner prior to the required appraisal inspection.
- Provide an Appraisal Report (as referenced in the WSDOT *Right of Way Manual*) for WSDOT appraisal review.
- Coordinate any changes, corrections, or discussions initiated by the WSDOT as part of the appraisal review process and include them in the Final Appraisal Report.

There will be no fewer than three (3) ROW appraisal status virtual or in-person meetings with ROW status reports, agendas, and notes prepared by Design-Builder as part of those meetings or phone conferences. The Appraiser shall prepare the Appraisal Report using standard WSDOT format with landowner

contact, site inspection, and landowner financial information utilizing the Right of Way Plans as required in the *WSDOT Right of Way Manual* (M26-01.22).

WSDOT will be responsible for all appraisal reviews and determination of just compensation. The Design-Builder shall submit the Appraisal Report for review. The Design-Builder shall allow a minimum of 21 Calendar Days for WSDOT to review each Appraisal Report and determine just compensation.

ACQUISITION SERVICES

The Design-Builder shall prepare offer packages and legal descriptions, using stations and offsets based on approved Right of Way Plans and the *WSDOT Right of Way Manual* (M26-01.22), review title, present offers, and negotiate Right of Entry (ROE) and purchases, prepare administrative settlement memorandums and condemnation memorandums, prepare documents for execution, and process executed documents for all properties that will be acquired. The acquisition services shall include, but not be limited to the following:

- Track and update acquisition ROW schedule milestones.
- Prepare and maintain electronic and hard copy parcel files.
- Attend appraisal site visit.
- Provide a copy of the appraisal or the WSDOT-approved administrative offer summary, to the property owner, and to the tenants if tenant-owned real property.
- Review title report(s) supplied by WSDOT.
- Prepare all documents and deeds required for the assigned parcels.
- Prepare all legal descriptions.
- Have all acquisition documents reviewed and approved by WSDOT prior to presenting them to property owners.
- Maintain current negotiator diaries.
- Act as the agent for the WSDOT in all negotiations.
- Acquire right of entry, easement, and fee acquisitions as needed to construct, operate, and maintain the project.
- Provide a justification memorandum for any settlement above the approved just compensation as specified in this Section. Any administrative settlement at or above 10% must be pre-approved by WSDOT Real Estate Services and any administrative settlement up to 10% must be supported by justification to include damages not addressed and/or additional market data provided by the property owner.
- Provide a condemnation cover memorandum and parcel file addressing existing encumbrances as directed by WSDOT.
- Clear encumbrances and draft any documents as directed by WSDOT.
- Transmit completed parcel files including, but not limited to status reports, meeting agenda, meeting minutes, ROE package, offer package, executed

ROE agreement, executed conveyance documents, Administrative Settlement Justification or Condemnation Memorandums (as referenced in the WSDOT *Right of Way Manual*), and Encumbrance clearance documents to WSDOT. All parcel files shall be organized according to and include the applicable electronic content management (ECM) separator sheets whose templates for appraisal, acquisition, and relocation, as provided in Appendix 4. All ECM separator sheets shall be printed, not photo-copied, on 20-pound or heavier 8.5-inch by 11-inch paper stock on color paper as per the following list:

- Appraisal ECM separator sheet – light green.
- Acquisition ECM separator sheet - light blue.
- Relocation ECM separator sheet - light pink.

The Design-Builder shall provide ROW status reports, agendas, meeting minutes, and notes. The Design-Builder shall make requests to WSDOT for all preliminary and supplemental title reports. WSDOT shall submit all requests to land title insurance companies for preliminary title reports, supplemental reports, and final policies and provide electronic copies to the Design-Builder within 10 Calendar Days of receipt.

The Design-Builder shall submit all legal descriptions to WSDOT for review and approval. The Design-Builder shall allow WSDOT 14 Calendar Days for review and approval. WSDOT will provide WSDOT-approved acquisition forms for the Design-Builder's use. All offers will be made in person whenever feasible and there will be a minimum of four (4) substantive contacts by the Design-Builder prior to being determined at an impasse. A substantive contact will be considered:

- An in-person meeting with a landowner.
- A detailed phone or email conversation with a landowner.
- An exchange of written correspondence.

Real estate services negotiations will be deemed complete on a parcel if any of the following occur:

- The offer is rescinded.
- The parcel is forwarded to condemnation after obtaining a negotiated Possession and Use Agreement.
- All documents are signed and recorded, and all payments have been made.

The Design-Builder shall document administrative settlements in the negotiator's diary and an administrative settlement memorandum based on WSDOT's approved administrative settlement amount. The Design-Builder will prepare and

submit to WSDOT an Encumbrance report for all encumbrances to be cleared or accepted with all offer packages being reviewed.

At the completion of either executed documents or if the file is to be submitted for condemnation; all acquisition files will be transmitted by the Design-Builder to WSDOT with all the original documents.

WSDOT shall direct the closing and/or coordinate the closing in escrow, or administer the closing, of all real property transactions including the recording of instruments, the forwarding to lienholders or secured creditors or other parties of interests documentation prepared by the Design-Builder for purposes of clearance of encumbrances, as well as the making of payments to landowners and other parties having interests.

RELOCATION SERVICES

The Design-Builder shall develop a relocation plan, prepare, and present all relocation notices and benefit letters, provide relocation services, prepare relocation documents, participate in appeals, and compile executed documents and final relocation files for submittal to WSDOT. The relocation services shall include, but not be limited to:

- Relocation of displaced residential occupants, non-residential occupants, and personal property.
- Provide and maintain electronic and hard copy relocation files.
- Track and update relocation ROW schedule milestones.
- Attend appraisal site visit.
- Interview potential displaces and estimate relocation costs.
- Provide a relocation plan.
- Provide all relocation documents and executed relocation forms.

The Design-Builder shall act as the State's relocation agent for all affected parcels to include:

- Preparation of commercial move bids solicitation.
- Obtaining and analyzing move estimates.
- Computing relocation entitlements and obtaining the WSDOT approvals.
- Monitor moves from displacement sites.
- Process all relocation payments through the WSDOT.
- Participate in relocation appeals to provide information and clarification.
- Transmit completed relocation files to the WSDOT.

The Design-Builder shall submit one (1) draft and one (1) final relocation plan to WSDOT. WSDOT will review and approve the relocation plan prepared by the Design-Builder within 10 working days. The Design-Builder shall provide ROW

status reports, agendas, meeting minutes, and notes. WSDOT will provide approved relocation forms for the Design-Builder's use. The Design-Builder shall participate in any relocation appeal process including supplying supporting documentation and attending meetings. Relocation services will be complete when all property has been vacated, all claim periods have expired, and all payments have been made.

2.24.3.4 Other Property Rights

The Design-Builder may acquire any rights or interests in real property that, at the Design-Builder's discretion, are deemed necessary or advisable to acquire. Such real property may be required for workspace, lay-down areas, material storage areas, or other convenience. WSDOT will not be obligated to exercise its power of eminent domain; will not come into title to the property; and will not take any responsibility for the acquisition, maintenance, or disposition of additional properties or of any temporary rights of interest therein.

2.24.4 Property Management

The Design-Builder shall be responsible for the maintenance of improvements, compliance with all applicable permits, and providing reasonable safety and security measures relative to the preservation of the ROW parcels for the Project.

The Design-Builder shall assume responsibility for the ROW parcels indicated above beginning on the 1st Calendar Day after conveyance documents have been recorded and the property owner has been paid and ending on the 30th Calendar Day following Culvert Bundle Physical Completion. The Design-Builder shall establish a property management plan and shall submit the plan to the WSDOT Engineer for Review and Comment within 7 Calendar Days after conveyance documents have been recorded and the property owner has been paid. The plan shall assure that all acquired ROW is maintained in a manner that will prevent, minimize, or correct problems such as vandalism, trespassing, rodent infestation, and illegal dumping or disposal of rubble and debris within the ROW.

2.24.5 Demolition

The Design-Builder's Work shall include the demolition of all buildings, structures, and other improvements located in the ROW and to be removed by the Project. The Design-Builder's Work shall also include the inspection, sampling, and testing of any lead-based paint, asbestos, or other Hazardous Materials, in accordance with Applicable Law. The Design-Builder shall provide the WSDOT Engineer with a hazardous materials investigation plan for Review and Comment. All Utilities installed or connected to buildings, structures, or other improvements in the ROW shall be abandoned or removed in accordance with the requirements of the applicable Utility Owner as part of the demolition, unless otherwise specified. Prior to the demolition of buildings, structures, or other improvements

located in the ROW which were acquired as an early acquisition, the Design-Builder shall consult with the WSDOT Engineer and receive approval for demolition. An early acquisition is defined in Federal Regulation 23 CFR 710.105 as acquisition of real property by State or local governments prior to the completion of the environmental review process for a proposed transportation project.

2.24.6 Right of Entry

Right of Entry Letter:

If the Design-Builder determines that there is a need to enter property not owned by WSDOT, it shall be the Design-Builder's responsibility to obtain permission to enter that property from the legal property owner.

The Design-Builder shall submit a letter to the property owner that includes the following:

- Request for permission to enter the owner's property
- An explanation of the type of work that will take place and the type of equipment that will be used
- Any damage to the property will be restored to its condition that existed prior to the commencement of work
- Date, time, and duration the Design-Builder will be on the property
- A statement that the permission for the right of entry is between the Design-Builder and the property owner and that WSDOT is not liable in any way
- A signature and date block for the property owner's signature

The Design-Builder shall submit a copy of the signed letter to the WSDOT Engineer prior to entering the private property.

Right of Entry Permit:

If the Design-Builder determines that there is a need to enter property not owned by WSDOT for invasive purposes, such as digging or boring, it shall be the Design-Builder's responsibility to obtain permission to enter that property from the legal property owner.

The Design-Builder shall submit a letter to the property owner that includes the following:

- Compensation
- Request for permission to enter the owner's property.
- An explanation of the type of work that will take place and the type of equipment that will be used.
- Any damage to the property will be restored to the condition that existed prior to the commencement of work.

1 Date, time, and duration the Design-Builder will be on the property.

2 **2.24.7 Right of Way Easements**

3 **2.24.7.1 Permanent Easement**

4 This Section is intentionally omitted

5 **2.24.7.2 Temporary Construction Easements**

6 If the Design-Builder determines that there is a need for temporary construction
7 easements, it shall be the Design-Builder's responsibility to obtain those
8 easements to enter that property from the legal property owner.

9 If the Design-Builder requires a time extension of any temporary construction
10 easement, the Design-Builder shall submit a request to the WSDOT Engineer to
11 obtain a time extension. The time extension will be acquired as set forth in this
12 Section. All costs associated with obtaining any time extension shall be paid by
13 the Design-Builder. The duration of the PDB Contract shall not be extended if any
14 temporary construction easements cannot be extended.

15 **2.24.8 Acquisition Subject to Existing Easements**

16 Several property parcels were acquired subject to existing public Utility
17 Easements. The Design-Builder shall protect the utilities, so their function is not
18 impaired during construction. This requirement shall remain until the Utility is
19 Relocated and becomes serviceable, if applicable. If the Utility will not be
20 Relocated, then it shall remain serviceable after construction.

21 **2.24.9 Construction Interdisciplinary Commitments**

22 Construction interdisciplinary commitments (IDC) provide commitments (in the
23 form of construction memoranda) by the WSDOT Engineer during the acquisition
24 of the property that shall be fulfilled by the Design-Builder with respect to the
25 property parcel acquired. IDCs, if any, shall be developed during the Phase 1
26 Services Period as part of the Culvert Bundle Submittal and updated as needed
27 during Culvert Bundle Work

28 **2.24.10 Notification**

29 The Design-Builder shall provide written notification to the WSDOT Engineer
30 10 Calendar Days in advance of any Work within the limits of a right of entry
31 permit acquired for this project.

32 The Design-Builder shall notify the WSDOT Engineer as Work is completed on
33 the individual parcels.

34 The Design-Builder shall notify certain property owners in accordance with any
35 necessary IDC's and any temporary construction easements acquired for this

Project. The Design-Builder's notification shall include, but is not limited to, the following:

- When Utilities are Relocated
- When individual sewer service lines are connected and become operational
- When individual stormwater service lines are connected and become operational

2.24.11 Submittals

Project submittals may include, at a minimum, the following:

- Request for additional ROW
- Property Management Plan
- Right of entry letter, together with all supporting documentation for the right of entry
- Requests for extensions or additional temporary construction easements

2.24.11.1 Hazardous Material Abatement

Prior to any demolition, the Design-Builder shall submit a Hazardous Material Investigation Plan to the WSDOT Engineer for Review and Comment. At a minimum, the plan shall address the following:

- The name and location of the disposal site of the Hazardous Material
- How the Hazardous Material will be abated to prevent release into the atmosphere, onto the earth, and into underground and surface water

2.24.11.2 Right of Way Certification

Prior to the commencement of construction in any Project phase or segment, ROW must be certified in accordance with Chapter 17 of the WSDOT *Right of Way Manual*.

2.24.11.3 Miscellaneous Submittals

At the request of the WSDOT Engineer, the Design-Builder shall deliver to the WSDOT Engineer Work-related Submittals that do not fit in the previous categories but are prepared in accordance with this Section.

End of Section